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Chapter No. 387
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HOUSE BILL NO. 1139

Originated in House



Clerk

HOUSE BILL NO. 1139

AN ACT TO AMEND SECTION 77-5-203, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF CERTAIN TERMS AS USED IN THE ELECTRIC POWER ASSOCIATION LAW; TO AMEND SECTION 77-5-207, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PERIOD OF DURATION OF A CORPORATION FORMED UNDER THIS ARTICLE MAY BE PERPETUAL; TO AMEND SECTION 77-5-209, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THE NAME OF A CORPORATION SHALL INCLUDE EITHER THE WORDS "ELECTRIC POWER ASSOCIATION" OR "ELECTRIC COOPERATIVE"; TO AMEND SECTION 77-5-211, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR FILING A CERTIFICATE OF INCORPORATION WITH THE SECRETARY OF STATE; TO AMEND SECTION 77-5-215, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR A CORPORATION TO AMEND ITS CERTIFICATE OF INCORPORATION; TO AMEND SECTION 77-5-217, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE WHEREBY TWO OR MORE CORPORATIONS MAY ENTER INTO AN AGREEMENT FOR CONSOLIDATION; TO AMEND SECTION 77-5-219, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR DISSOLUTION OF A CORPORATION; TO AMEND SECTION 77-5-221, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROVISION PROVIDING FOR THE ANNUAL ELECTION OF A BOARD OF DIRECTORS; TO AMEND SECTION 77-5-223, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS OF THE BOARD OF DIRECTORS; TO AMEND SECTION 77-5-225, MISSISSIPPI CODE OF 1972, TO DELETE CERTAIN LANGUAGE REGARDING RATES TO NONMEMBERS; TO AMEND SECTION 77-5-229, MISSISSIPPI CODE OF 1972, TO MAKE A NONSUBSTANTIVE CHANGE; TO AMEND SECTION 77-5-231, MISSISSIPPI CODE OF 1972, TO REVISE THE SPECIFIC POWERS OF A CORPORATION FORMED UNDER THIS ARTICLE; TO AMEND SECTION 77-5-233, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CORPORATION SHALL CONTINUE TO HAVE THE POWER TO ACQUIRE, CONSTRUCT, OWN, INVEST IN, OPERATE, MAINTAIN AND/OR IMPROVE GENERATING AND/OR TRANSMISSION ASSETS; TO AMEND SECTION 77-5-235, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL

RATES OF A CORPORATION FORMED UNDER THIS ARTICLE SHALL BE ESTABLISHED BY THE CORPORATION'S BOARD WITH CERTAIN EXCEPTIONS; TO AMEND SECTION 77-5-239, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A CORPORATION TO INCUR OBLIGATIONS AND LIABILITIES, BORROW MONEY, ISSUE NOTES, BONDS, CERTIFICATES OF INDEBTEDNESS AND OTHER OBLIGATIONS, AND TO ENTER CONTRACTS OF GUARANTY; TO AMEND SECTION 77-5-241, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY NOTE, BOND OR OTHER INDEBTEDNESS ISSUED BY A CORPORATION MAY BEAR SUCH INTEREST RATE OR RATES AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS; TO AMEND SECTION 77-5-243, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE SECURITY FOR OBLIGATIONS OF A CORPORATION; TO AMEND SECTION 77-5-247, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT MONIES OF A CORPORATION SHALL BE DEPOSITED OR INVESTED IN ONE OR MORE BANKS, TRUST COMPANIES, FINANCIAL INSTITUTIONS OR SUCH OTHER PUBLIC OR PRIVATE ENTITIES AS MAY BE APPROVED BY THE BOARD OF DIRECTORS; TO AMEND SECTION 77-5-249, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CORPORATION AND ITS PROPERTY SHALL BE TAXED AND ASSESSED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSISSIPPI; TO AMEND SECTION 77-5-253, MISSISSIPPI CODE OF 1972, TO REQUIRE EACH CORPORATION TO SUBMIT FINANCIAL AND COMPLIANCE AUDITS TO THE MISSISSIPPI PUBLIC SERVICE COMMISSION AND PUBLIC UTILITIES STAFF; TO AMEND SECTION 77-5-255, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MEDIATION PROCEEDINGS OF DISPUTES BETWEEN MEMBERS OR CUSTOMERS AND ELECTRIC POWER ASSOCIATIONS; TO CREATE SECTION 77-5-257, MISSISSIPPI CODE OF 1972, TO DECLARE THAT THE MISSISSIPPI PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS OF THE STATE SHALL NOT HAVE JURISDICTION OVER THOSE PORTIONS OR ASPECTS OF A CORPORATION'S OPERATIONS, FACILITIES, SERVICES OR RATES THAT ARE REGULATED BY THE TENNESSEE VALLEY AUTHORITY; TO CREATE SECTION 77-5-259, MISSISSIPPI CODE OF 1972, TO LIMIT THE TIME BY WHICH AN ACTION MAY BE COMMENCED FOR COLLECTION OR REIMBURSEMENT ARISING FROM A BILLING ERROR BY A CORPORATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 77-5-203, Mississippi Code of 1972, is amended as follows:

77-5-203. The following terms whenever used or referred to in this article shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Corporation" shall mean a corporation formed under this article or operating under this article pursuant to Section 77-5-213.

(b) "Bonds" shall mean and include bonds, interim certificates or receipts, notes, debentures and all other evidences of indebtedness, either issued or the payment thereof assumed by the corporation.

(c) "Person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic.

(d) "Energy" shall mean and include any and all electric energy no matter how or where generated or produced.

(e) "Acquire" shall mean and include construct, acquire by purchase, lease, devise, gift, or other mode of acquisition.

(f) "System" shall mean and include any plant, works, system, facilities, or properties, or parts thereof, together with all appurtenances thereto, used or useful in connection with the generation, production, transmission or distribution of energy.

(g) "Law" shall mean any act or statute, general, special or local of this state.

(h) "Federal agency" shall mean and include the United States of America, the President of the United States of America, Tennessee Valley Authority, the Federal Emergency * * * Management Agency, the United States Department of Agriculture and its agencies, including the Rural Utilities Service, and any and all

other authorities, agencies and instrumentalities of the United States of America, heretofore or hereafter created.

(i) "Improve" shall mean and include construct, reconstruct, improve, replace, extend, enlarge, alter, better or repair.

(j) "Board" shall mean the board of directors of a corporation formed under this article.

(k) "Member" shall mean and include each natural person signing the certificate of incorporation of a corporation and each person admitted to and retaining membership therein pursuant to law or its bylaws, and shall include a joint membership as defined by the corporation's bylaws.

(l) "Services" or "service" shall mean the sale or other disposition of energy, electrical appliances, wiring and equipment at the lowest cost consistent with sound economy, public advantage and the prudent conduct of the business of a corporation.

(m) "Certificate of incorporation" includes a certificate of incorporation or articles of incorporation.

(n) "Rate" means and includes every compensation, charge, deposit, contribution, fee, fare, toll, rental, cost and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged, collected, avoided, or owed by a corporation for or relating to electric energy offered or provided by the corporation to the

public or received by the corporation, and any rules, regulations, practices or contracts relating to any such compensation, charge, deposit, contribution, fee, fare, toll, rental, cost, or classification, including, but not limited to, any rules, regulations, practices or contracts relating to the disconnection of service to members or nonmember customers who have failed to pay for electric energy provided by the corporation.

SECTION 2. Section 77-5-207, Mississippi Code of 1972, is amended as follows:

77-5-207. The certificate of incorporation shall state:

(a) The name of the corporation, which name shall include the words "electric power association" or "electric cooperative" and shall be such as to distinguish it from any other corporation organized and existing under the laws of this state.

(b) The location of its principal office and the post-office address thereof.

(c) The maximum number of directors, not less than three (3).

(d) The names and post-office addresses of the directors who are to manage the affairs of the corporation for the first year of its existence, or until their successors are chosen.

(e) The period of the duration of the corporation, which * * * may be perpetual.

(f) The terms and conditions upon which persons shall be admitted to membership in the corporation.

The certificate of incorporation may also contain any provisions not contrary to law which the incorporators may choose to insert for the regulation of its business and for the conduct of the affairs of the corporation. It may also contain any provisions creating, defining, limiting or regulating the powers of the corporation, its directors and members.

SECTION 3. Section 77-5-209, Mississippi Code of 1972, is amended as follows:

77-5-209. The name of a corporation * * * shall include either the words "electric power association" or "electric cooperative." The words "electric power association" and the words "electric cooperative" shall not be used in the corporate name of any corporation other than those formed pursuant to the provisions of this article or those operating under this article pursuant to Section 77-5-213. Whenever the words "electric power association" or "electric cooperative" or "nonprofit cooperative electric power association" appear in the laws of this state, such words shall refer to a corporation formed pursuant to and/or operating under the provisions of this article, including a corporation that uses either the words "electric power association" or "electric cooperative" in its name.

SECTION 4. Section 77-5-211, Mississippi Code of 1972, is amended as follows:

77-5-211. The natural persons executing the certificate of incorporation shall be residents of the territory in which the

principal operations of the corporation are to be conducted, who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before any officer authorized to take acknowledgments to deeds or other instruments. When so acknowledged, the * * * certificate may be filed with the Secretary of State at any time thereafter within six (6) months of the date of the last acknowledgment. * * * When submitted for filing, the Secretary of State shall accept and file the certificate and enter the date of filing in its records. The certificate of incorporation shall be effective as of the date on which the certificate of incorporation is filed with the Secretary of State, and the powers specified in the certificate of incorporation shall thereupon be vested in the corporation without further formalities.

* * *

SECTION 5. Section 77-5-215, Mississippi Code of 1972, is amended as follows:

77-5-215. A corporation * * * may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors, or to change any other provisions therein. Notwithstanding any provisions of a corporation's certificate * * * of incorporation to the contrary, * * * if a corporation's certificate of incorporation provides that the period of duration of the corporation is a limited number of

years, the corporation may amend its certificate to provide that the duration of the corporation is perpetual if such an amendment is authorized by the board of directors of the corporation pursuant to the affirmative vote of at least two-thirds (2/3) of the directors. Otherwise, and not withstanding any provisions of a corporation's certificate of incorporation to the contrary, a corporation may amend its certificate of incorporation if (a) the amendment is authorized by the board of directors of the corporation pursuant to the affirmative vote of at least two-thirds (2/3) of the directors, and (b) the amendment authorized by the board of directors is ratified by sixty percent (60%) of the corporation's members voting, at either the corporation's annual meeting or at a meeting of the members called for the special purpose of considering and voting on the amendment. Written notice of any meeting at which an amendment to the corporation's certificate * * * of incorporation will be voted on by the members must be sent to the corporation's members at least thirty (30) days prior to the date of the meeting. The notice shall set forth the date, time, location and purpose of the meeting, and identify and describe the purpose of the amendment authorized by the corporation's board of directors. In the event an amendment is fully authorized * * * in accordance with the foregoing, a certificate reflecting the amendment to the certificate * * * of incorporation shall be prepared and executed by the president and by the secretary of the corporation who shall

both affirm therein, under oath, that they have been authorized by the corporation to execute and file such certificate. Such certificate of amendment shall then be filed by the corporation in the Office of the Secretary of State, who shall forthwith cause this certificate to be handled in the manner prescribed in Section 77-5-211 for original certificates of incorporation; and the amendment of the corporation's certificate or articles of incorporation shall be effective as of the date on which the certificate of amendment is * * * filed with the Secretary of State, and the powers specified in the certificate of amendment shall thereupon be vested in the corporation without further formalities.

SECTION 6. Section 77-5-217, Mississippi Code of 1972, is amended as follows:

77-5-217. Any two (2) or more corporations * * * may enter into an agreement for the consolidation of such corporations. Such agreement, which may or may not require the dissolution of one or both of the corporations as provided in Section 77-5-219, shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, who shall be not less than three (3), the time of the * * * initial meeting of the consolidated corporation and election of directors, and the name of at least three (3) persons to * * * serve as directors until the * * * election of directors at the initial meeting. * * * To be effective, any such

agreement * * * must be (a) authorized by the * * * board of * * * directors of each corporation pursuant to the affirmative vote of at least two-thirds (2/3) of the directors of each corporation, and (b) ratified by sixty percent (60%) of each corporation's members voting, at either the corporation's annual meeting or at a meeting of the members called for the special purpose of considering and voting on the agreement for consolidation. If the agreement is so authorized and ratified, a joint application for approval of consolidation shall be filed by the consolidating corporations with the Mississippi Public Service Commission in the manner provided by Section 77-3-23. In no event shall another party be allowed to intervene in a proceeding initiated under this section for the purpose of seeking to obtain the certificated area, or any portion thereof, of any petitioning party. Upon approval of the application by the commission, the directors named in the consolidation agreement shall subscribe and acknowledge a certificate conforming substantially to * * * an original * * * certificate of incorporation, except that it shall be entitled and indorsed "certificate of consolidation of ____" (the blank space being filled in with the names of the corporations being consolidated) and shall state:

- (a) The names of the corporations being consolidated.
- (b) The name of the consolidated corporation.
- (c) The other items required or permitted to be stated in * * * a corporation's original certificate of incorporation.

Such certificate of consolidation * * * shall be filed with the Secretary of State in the same * * * manner as * * * provided in Section 77-5-211. Upon such filing, the proposed consolidated corporation, under its designated name, shall be and constitute a body corporate with all the powers of a corporation as originally formed under the provisions of this article.

SECTION 7. Section 77-5-219, Mississippi Code of 1972, is amended as follows:

77-5-219. * * * Upon complying with the requirements of Section 77-5-217 or 77-5-237, a corporation * * * may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and indorsed "certificate of dissolution of ____" (the blank space being filled in with the name of the corporation) and shall state:

(a) Name of the corporation * * *.

(b) The date of filing of the * * * corporation's most recent certificate of incorporation.

(c) That the corporation elects to dissolve.

(d) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the * * * officers of the corporation, who shall make and annex an affidavit stating that the corporation has complied with the

requirements of Section 77-5-217 or Section 77-5-237 and that they
have been authorized to execute and file such certificate * * *.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same * * * place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be ratably distributed to the members thereof.

SECTION 8. Section 77-5-221, Mississippi Code of 1972, is amended as follows:

77-5-221. * * * A corporation * * * shall have a board of directors, and the powers of the corporation shall be vested in and exercised by such board of directors. The directors of the corporation * * *, other than those named in * * * a certificate of incorporation, * * * shall be elected annually by the members entitled to vote. The initial directors of the corporation, including directors elected to succeed those * * * named in a certificate of incorporation, shall be elected * * * as follows: one-third (1/3) to be elected for a term of one (1) year,

one-third (1/3) for a term of two (2) years, and one-third (1/3) for a term of three (3) years. Thereafter, all directors shall be elected for a term of three (3) years, or for such other term(s) as may be subscribed by the corporation's certificate of incorporation. Only members of * * * the corporation shall be entitled to vote. The directors of a corporation must be members of the corporation * * *. In order to qualify as a candidate for director of a corporation by petition, a candidate shall obtain not less than fifty (50) signatures of members of the corporation * * * on whose board such candidate wishes to serve; however, a corporation shall be empowered, in its discretion, to adopt, through its bylaws, * * * provisions which * * * allow a person to qualify as a candidate for director by petition by obtaining less than fifty (50) signatures or by other less restrictive means. The directors shall be entitled to reimbursement for expenses incurred by them in the performance of their duties. In addition to * * * reimbursement for expenses, the board may authorize compensation and benefits to be paid to and on behalf of such directors for the * * * performance of their duties, including for the time it takes for them to travel to and from meetings and to board functions. The board shall elect * * * periodically from its own number * * * officers as prescribed by the corporation's bylaws. Directors may elect to attend the board meetings by telephone or video conference. All board meetings, unless in executive session, shall be open to any member of a

corporation. Subject to the limitations below, any member or customer of a corporation shall be entitled to address the board at any regular meeting regarding any suggestions for better service, grievances or any other matter affecting the corporation. The * * * board shall have the right to impose reasonable limitations upon the number of members or customers addressing any one (1) board meeting * * * and the amount of time allotted to each presentation, and also to require members and customers to give the board reasonable * * * advance notice of their desire to address the board * * * so that the board may investigate and be able to respond to the presentation.

SECTION 9. Section 77-5-223, Mississippi Code of 1972, is amended as follows:

77-5-223. The board of a corporation shall have power to do all things necessary or convenient in conducting the business of * * * the corporation, including, but not limited to:

(a) * * * To adopt and amend bylaws for the management and regulation of the affairs of the corporation. The bylaws of a corporation may make provisions, not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the numbers, times and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its officers;

defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings * * *; the date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members * * *; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof; and such other matters as the board may deem appropriate or desirable.

(b) To appoint agents and employees and to fix their compensation and benefits and the compensation and benefits of the officers of the corporation.

(c) To execute all instruments or documents, or to delegate the execution thereof.

(d) To delegate to one or more of the directors or to the officers, agents and employees of a corporation such powers and duties as it may deem proper.

(e) To make its own rules and regulations as to its procedure.

(f) * * * To appoint such committees as the board shall in its judgment see fit, which committees may consist of members or nonmembers of either the board or the corporation.

(g) To cause the corporation to reimburse directors for expenses incurred by them in the performance of their duties and

to fix compensation and benefits to be paid to and on behalf of directors for the performance of their duties.

SECTION 10. Section 77-5-225, Mississippi Code of 1972, is amended as follows:

77-5-225. Except as hereinafter provided, the corporate purpose of * * * a corporation * * * shall be to render service to its members only. Any person may become and remain a member if such person shall use energy supplied by such corporation and shall comply with the terms and conditions in respect to membership contained in the bylaws of such corporation, which terms and conditions shall be nondiscriminatory. Any person who shall agree to use energy supplied by the corporation from an existing line or from a line the construction of which has been authorized or commenced by the corporation may be admitted to membership in the corporation prior to such use upon complying with the other terms and conditions with respect to membership contained in the certificate of incorporation or in the bylaws. The membership fee of the corporation shall be fixed by the board of directors. Should the corporation acquire any electric facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the times of such acquisition without requiring that such persons become members. In no event shall the number of such nonmembers served exceed forty-nine percent (49%) of the total

number of persons served by the corporation. Such nonmember customers shall have the right to become members upon nondiscriminatory terms. * * *

SECTION 11. Section 77-5-229, Mississippi Code of 1972, is amended as follows:

77-5-229. * * * A corporation * * * is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose, and no enumeration of particular powers hereby granted in this article shall be construed to impair any general grant of power herein contained, or to limit any such grant to a power or powers of the same class or classes as those so enumerated.

SECTION 12. Section 77-5-231, Mississippi Code of 1972, is amended as follows:

77-5-231. (1) A corporation * * * shall have power to do any and all acts or things necessary or convenient for carrying out the purposes for which it was formed, including, but not limited to:

- (a) To sue and be sued.
- (b) To have a seal and alter the same at pleasure.
- (c) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(d) To render service and to acquire, own, operate, maintain and improve a system or systems within the state and in counties adjacent thereto.

(e) To pledge all or any part of its revenues and to mortgage or otherwise incumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its bonds or other obligations.

(f) To use any right-of-way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of a system, granted by the state or any political subdivision thereof, provided that the governing body of such political subdivision shall consent to such use, and to have and exercise the power of eminent domain in the manner provided by the condemnation laws of this state for acquiring private property for public use, such right to be paramount except as to the property of the state or of any political subdivision thereof.

(g) To accept gifts or grants of money, property, real or personal, from any person, municipality or federal agency and to accept voluntary and uncompensated services.

(h) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any person, federal agency, state agency or municipality for the purchase, transfer or sale of energy and/or the acquisition of all or any

part of any system, and in connection with any such contract to stipulate and agree to such covenants, terms and conditions as the board may deem appropriate, including covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices and the manner of disposing of the revenues of the system operated and maintained by the corporation.

(i) To sell, lease, or otherwise dispose of all or any part of its property, subject however to the provisions of Section 77-5-237.

(j) To contract debts, borrow money and to issue, assume or indorse the payment of bonds or other evidences of indebtedness.

(k) To fix, maintain and collect fees, rents, tolls and other charges for services rendered.

(l) To acquire and to sell, lease, distribute and generally to deal in electrical and plumbing appliances, apparatus, machinery and equipment for the purpose of and in connection with the promotion of the sale of electric energy to its customers; to assist its customers to purchase or otherwise obtain such appliances, apparatus, machinery and equipment; to assist its customers to wire their premises and to install therein such appliances, apparatus, machinery and equipment; to acquire and to indorse, sell, pledge, hypothecate and dispose of notes,

bonds and other obligations of its customers in carrying out the purposes expressed in this paragraph.

(m) To * * * maintain, in any reasonable manner and in its discretion, its easements and rights-of-way and adjacent property within a reasonable or necessary distance of its energy facilities free of vegetation, trees, limbs or other impediments in order to foster the integrity and reliability of the corporation's electric energy system or the safety of the public or its members, agents or employees.

(* * *n) To condemn any land, easements, or rights-of-way, either on, under, or above the ground, as the association may deem necessary for any purposes mentioned in this article other than the purposes described in subsection (2) of this section, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes. Such power of condemnation may be exercised in the mode or method of procedure prescribed by Chapter 27, Title 11, Mississippi Code of 1972, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain. Where condemnation proceedings become necessary, the judge of the circuit court or the judge of the county court in counties where the county court exists, in which such proceedings are filed,

shall, upon application of the authority, and upon the deposit in court, to the use of the person or persons lawfully entitled thereto, of such amount as the judge may deem necessary to assure just compensation, order that the right of possession shall issue immediately or as soon and upon such terms as the judge, in his discretion, may deem just and proper. Upon application of the parties in interest other than the corporation, the judge may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceedings.

(* * *o) To operate across state lines.

(* * *p) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

(2) Any generation and transmission electric corporation created under this article may undertake economic development activities, whether directly, indirectly, or in conjunction with other entities, including activities such as providing capital, or investment in or acquisition and development of business or industrial sites and the necessary infrastructure or services needed to attract new or existing businesses or industry, to create or maintain employment opportunities, or otherwise to positively impact its service territory or in some manner promote the sale of electric energy.

SECTION 13. Section 77-5-233, Mississippi Code of 1972, is amended as follows:

77-5-233. To the extent necessary in the judgment of * * * its board to make effective the powers conferred by this article, * * * a corporation shall continue to have the power to acquire, construct, own, invest in, operate, maintain, and/or improve * * * generating and/or transmission * * * assets.

SECTION 14. Section 77-5-235, Mississippi Code of 1972, is amended as follows:

77-5-235. (1) A corporation * * * shall have the power to fix, adjust, charge, collect and pay reasonable rates for electric energy and other facilities, supplies, equipment, products, commodities, goods and services furnished by, offered by or furnished to the corporation. All rates of a corporation formed or operating under the provisions of this article shall be established by the corporation's board and shall not be regulated by the Mississippi Public Service Commission.

(2) Notwithstanding the foregoing, a corporation shall be subject to commission regulations that limit disconnections of service during freeze warnings or excessive heat warnings issued by the National Weather Service, limit disconnections of service in life-threatening situations certified by a medical doctor, or establish initial deposit requirements for certified victims of domestic violence.

(3) Nothing herein shall be construed to impair the Mississippi Public Service Commission's jurisdiction and authority, if any, to require corporations to establish, offer or participate in energy efficiency or net metering programs, but in no event shall the commission set or establish the level of expenditures, compensation or credits associated with a corporation's energy efficiency, net metering or other programs.

(4) As used in this section, "attaching entity" means a cable television system or provider of telecommunications service. Nothing in this article shall be construed to impair the Mississippi Public Service Commission's jurisdiction and authority that existed prior to the effective date of this act, if any, with regard to a corporation's rates, terms and conditions for attachments by an attaching entity to poles owned or controlled by the corporation. A corporation may only deny an attaching entity access to its owned or controlled poles on a nondiscriminatory basis if there is insufficient capacity or for reasons of safety and reliability and if the attaching entity will not resolve the issue. Nothing in this subsection shall be construed to prohibit a corporation from requiring an attaching entity to enter into a pole attachment agreement consistent with this section.

(5) A corporation's rates for energy furnished or offered by the corporation shall be sufficient at all times to pay all operating and maintenance expenses necessary or desirable for the prudent conduct and operation of its business and to pay the

principal of and interest on such obligations as the corporation may have issued and/or assumed in the performance of the purpose for which it was formed. The revenues and receipts of a corporation shall first be devoted to such operating and maintenance expenses and to the payment of such principal and interest and thereafter to such reserves for improvement, new construction, depreciation and contingencies as the board may from time to time prescribe. Revenues and receipts not needed for these purposes shall be returned to the members * * * by such means as the board may decide, including through the reimbursement of membership fees, * * * the implementation of general rate reductions, the limitation or avoidance of future rate increases, or such other means as the board may * * * determine.

SECTION 15. Section 77-5-239, Mississippi Code of 1972, is amended as follows:

77-5-239. A corporation * * * shall have the power to incur obligations and liabilities, borrow money, issue notes, bonds, certificates of indebtedness and other obligations, and to enter into contracts of guaranty.

SECTION 16. Section 77-5-241, Mississippi Code of 1972, is amended as follows:

77-5-241. Any * * * note, bond, or other * * * indebtedness * * * issued by a corporation * * * may bear such interest rate or rates * * * as may be determined by the board of directors of the corporation * * *.

SECTION 17. Section 77-5-243, Mississippi Code of 1972, is amended as follows:

77-5-243. * * * A corporation shall have the power to execute and deliver any of one or more mortgages, deeds of trust, financing statements, or other instruments to secure debt covering, or to create by other means a security interest in, any or all of the real or personal property assets, rights, privileges, licenses, franchises, and permits of the corporation or any interest therein, as well as the revenues therefrom, whether acquired or to be acquired wherever situated, for the purpose of securing the payment or performance of any one or more contracts, notes, bonds, or other obligations of the corporation.

SECTION 18. Section 77-5-247, Mississippi Code of 1972, is amended as follows:

77-5-247. All * * * monies of a corporation from whatever source derived, shall be deposited or prudently invested in one or more banks * * *, trust companies, or financial institutions, as may be approved by the board of directors, and, if the corporation shall so require, each of such accounts shall be continuously secured by a pledge of direct obligations of the United States of America or of the State of Mississippi having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account or accounts, or otherwise insured by the Federal Deposit Insurance Corporation by whatever mechanism the corporation's board may deem appropriate.

Such securities shall either be deposited with the corporation or held by a trustee or agent satisfactory to the corporation. In lieu of any such pledge or such securities, said deposits may be secured by a surety bond or bonds which shall be in form, sufficiency and substance satisfactory to the corporation.

SECTION 19. Section 77-5-249, Mississippi Code of 1972, is amended as follows:

77-5-249. * * * A corporation and * * * its property shall be * * * taxed and assessed in accordance with the * * * laws of the * * * State of Mississippi.

SECTION 20. Section 77-5-253, Mississippi Code of 1972, is amended as follows:

77-5-253. All corporations created under this * * * article shall submit annual financial and compliance audits to the Mississippi Public Service Commission and Public Utilities Staff for review and archiving.

SECTION 21. Section 77-5-255, Mississippi Code of 1972, is amended as follows:

77-5-255. (1) Subject to the limitations herein, the Public Service Commission shall investigate, review and * * * mediate any dispute which qualifies as specified herein between a member or customer and the corporation of which he is a member. The minimum amount of a dispute which shall qualify for * * * mediation under this section shall be: (a) One Thousand Dollars (\$1,000.00) which

has accumulated over the past twelve (12) months or (b) ten percent (10%) of the cumulative previous twelve (12) months' billing, whichever shall be the lesser. Investigation, review and * * * mediation shall be commenced upon the filing of a petition with the Public Service Commission by a corporation or a member or customer of a corporation; provided, however, that the Public Service Commission shall not commence any proceedings nor commence any investigation * * *, review or mediation of any such dispute until it has first been notified by both the member and the corporation of their consent to the investigation, review and mediation. The Public Service Commission also shall not commence any proceedings nor commence any investigation, review or mediation pursuant to such petition if at the time of filing the petition suit has been filed in any court of this state or of the United States with regard to the subject matter of the dispute and in which such corporation and member or customer are parties. Any such petition shall be immediately dismissed if any such suit is filed after filing of the petition with the commission.

(2) In any * * * mediation proceedings commenced under the provisions of this section, the Public Service Commission may, by order entered on its minutes and delivery of a certified copy thereof to the corporation, direct the corporation and the member or customer to provide the Public Service Commission with copies of all statements, accounts and reports concerning * * * the * * * dispute which the Public Service Commission may require. The

Public Service Commission is further authorized to conduct and * * * may conduct, or * * * request the * * * Public Utilities Staff to conduct, investigation * * * and * * * mediation of the dispute and may negotiate with the corporation and the member or customer for the resolution thereof. In every * * * mediation proceeding under this section the Public Service Commission may perform only such duties relating to the dispute as it deems reasonable and likely to result in settlement of the dispute * * * between the corporation and the member or customer.

(3) Participation and continued participation in any investigation, proceeding, negotiation or * * * mediation under the provisions of this section shall be voluntary by the corporation and the member or customer * * *.

SECTION 22. The following shall be codified as Section 77-5-257, Mississippi Code of 1972:

77-5-257. TVA jurisdiction. It is hereby recognized that certain corporations formed or operating under this article have entered into contracts with the Tennessee Valley Authority for the purchase of wholesale electric power and that the operations, facilities, services and rates of such corporations are thereby subject to extensive regulation by the Tennessee Valley Authority. In order to avoid the inefficiencies and confusion caused by duplicative, overlapping and conflicting jurisdiction and regulations, it is hereby declared that the Mississippi Public Service Commission and political subdivisions of the state shall


not have jurisdiction over and shall not regulate those portions or aspects of a corporation's operations, facilities, services, or rates that are regulated by the Tennessee Valley Authority. In the event of a dispute between the Mississippi Public Service Commission (commission) and the Tennessee Valley Authority (TVA) over the existence or scope of TVA's regulatory authority, the commission shall defer to TVA's asserted authority unless and until the commission has obtained a favorable, final, and nonappealable declaratory judgment against TVA in a court of competent jurisdiction. In any such suit, the commission shall not force a corporation(s) to incur legal fees and expenses by naming them as a party, though a corporation shall maintain the right to seek voluntary intervention under the rules of the court in which the action is pending.

SECTION 23. The following shall be codified as Section 77-5-259, Mississippi Code of 1972:

77-5-259. **Limitation for billing errors.** In any action or regulatory proceeding arising from any overbilling or underbilling by a corporation, no collection, reimbursement, or other relief may be awarded for underbillings or overbillings occurring more than six (6) years prior to the commencement of the action or regulatory proceeding.

SECTION 24. This act shall take effect and be in force from and after July 1, 2016.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 29, 2016




SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 28, 2016



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR

*April 9, 2016
2:43pm*